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THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY

Letter dated 29 August 1991 from the Director of International Protection of the Office of the United Nations High Commissioner for Refugees to the Chairman of the forty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

The Office of the United Nations High Commissioner for Refugees has followed with great interest the work of the Sub-Commission at its forty-third session. We have been particularly heartened to hear from experts, observers, and non-governmental organizations alike, a broad-based recognition that the human rights of refugees are an important aspect of this body's work.

We share the concerns expressed by many over the course of this session that violations of human rights continue to be one of the many and complex causes of refugee flows, and that refugees continue to be particularly vulnerable to further violations of their human rights. At the same time, we are encouraged by our cooperative relationships with the expert, political and operational human rights bodies of the United Nations in addressing various aspects of the particular problems of refugees.

Among the refugee issues raised in this forum, is, in particular, the right of freedom of movement, including the situations of persons who are

unable to leave their country, as well as those who are compelled to leave their country and who are prevented from returning. The Working Group's report on this topic shows how complex even this single issue is.

Other concerns raised have been the harsh conditions of detention imposed for long periods of time on many asylum seekers. In that respect, UNHCR welcomes the observations, in the report of the Special Rapporteurs on the right to a fair trial, that immigration hearings and deportation proceedings are suits at law and asylum seekers are, therefore, entitled to a fair hearing, that detainees are entitled to have a court decide without undue delay on the lawfulness of a detention and that, in some circumstances, prolonged judicial proceedings can be found to constitute cruel, inhuman or degrading treatment or punishment.

Interventions on the subject of racism and xenophobia have properly noted that refugees and asylum seekers are among the first victims of this type of intolerance.

In reflecting on the matters concerning the human rights of refugees which have been brought to the attention of this body, I have been struck by the number and variety of issues raised, which cover the whole spectrum of the refugee experience from flight to exile to voluntary repatriation, local settlement or resettlement.

Because of the breadth of concern for the human rights of refugees expressed during this session, as well as the depth of expertise on such matters which is concentrated in this body, UNHCR would welcome an effort by the Sub-Commission to identify a means by which protection of the human rights of refugees could be strengthened in the human rights bodies of the United Nations. Certainly, many of our interests and concerns are shared, and there is scope for us to work together.

UNHCR has always attached great importance to the work of non-governmental organizations in the field of human rights, and particularly in the protection of refugees. Were it not for the concern and commitment of these organizations, supervision, as well as the setting of human rights standards, would be a much more difficult task than it is. One area where we believe that non-governmental organizations could make a practical and substantial contribution would be in relation to the draft declaration on the right to leave and to return. UNHCR would welcome the convening of a meeting of experts this year who could examine the draft declaration with a view toward furthering its progress at the Sub-Commission's forty-fourth session.

The Office of the High Commissioner for Refugees, which is commemorating this year the fortieth anniversary of the 1951 Convention relating to the Status of Refugees, is looking to the future. I see a need to promote and revitalize existing principles for the protection of refugees and, at the same time, with the help of the Sub-Commission, to explore avenues for progressive development of refugee protection law and practice.

(Signed) Michel Moussalli